



# RIGHTS STUFF

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## May an Employee be Fired for Failing to Complete Drug Treatment Program?

Bryan Shirley worked for Precision Castparts Corporation, for twelve years as the operator of "the largest extrusion press in the world." He took Vicodin as prescribed by his doctor to help alleviate pain caused by work-related injuries. At some point, he began seeing other doctors to collect additional prescriptions for Vicodin without telling his primary doctor.

Precision has a drug-free workplace policy that allows employees with drug problems to make a confidential report of their problem to the human resources department. HR refers the employee to treatment options. The policy says that an employee "who rejects treatment or who leaves a treatment program prior to being properly discharged will be terminated."

In November, 2009, Shirley had a near fatal overdose and requested medical leave, which was granted. He checked into treatment in Houston and finished the first step of the program, detoxification. The second step is focused on helping the patient curb his need for the drug. Shirley, against the advice of his treating physician, checked himself out before beginning the second step.

Shirley returned to work, where he was told that his failure to complete the treatment program was grounds

for termination. But he was given a second chance to finish the treatment and was told he would be welcomed back once he had successfully completed it. He went back to treatment, where he claimed he took only prescribed dosages of Vicodin. After one day, he checked himself out again. He was then fired for having twice failed to complete the required treatment program. He sued, alleging that Precision had violated his rights under the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA). He lost.

The ADA provides that employers may not discriminate against employees who have a history of drug abuse but who have gone through treatment and no longer abuse drugs. Shirley claimed that he was fired not because of his drug use but because of his failure to complete the treatment, and that such a termination violates the ADA. The Court disagreed, saying the company had the right to require that a current drug abuser undergo treatment.

He also argued that under FMLA, he had a right to return to his job after his leave for treatment. The Court said that this right is not unlimited and doesn't apply to an employee who has twice failed to complete treatment the employer reasonably required. The case is Shirley v. Precision Castparts Corp., 726 F. 3d 675 (5th Cir. 2013).

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## Clothing Store Has to Allow Woman to Wear Hijab

Umme-Hani Kahn worked for Abercrombie and Fitch in California. She said she complied with the company's dress code, wearing flip flops, shirts and jeans that she bought at the store. She also wore a hijab at work. The hijabs, or head scarves, that she wore matched the company colors.

Four months passed without incident, until a district manager visiting the store asked Kahn to remove her hijab. She refused, citing her Muslim faith. Within two weeks, she was fired for violating the store's "Look Policy," which

bans employees from wearing head coverings.

Kahn sued the chain, alleging discrimination on the basis of religion, and recently a federal judge found that the store will have to pay her damages. The judge wrote "reasonable jurors could determine that by offering Kahn one option - to remove her hijab despite her religious beliefs - Abercrombie acted with malice [and] reckless indifference." The judge noted that when Kahn interviewed for the job, she was wearing her hijab. She spent most of her time in the stockroom, folding clothes, and was not on

the store floor that often. No customers ever complained about her appearance, and there was no evidence that her hijab hurt sales. A trial will be held to determine the amount of damages the store owes.

Employers are required by federal, state and local laws to accommodate employees' religious beliefs if doing so is not an undue burden.

(Article based on several news reports from September 11, 2013.)

## Homeless Shelters Have to Comply with Fair Housing Laws

The federal Housing and Urban Development Department (HUD) announced in May that it was charging the City Rescue Mission of New Castle, Pennsylvania with disability discrimination because it refused to allow a blind man to keep his service dog in the shelter.

The federal fair housing act, and similar state and local laws, requires housing providers to make reasonable accommodations in their rules, policies, practices or services when needed to provide people with disabilities an equal opportunity to use or enjoy a dwelling.

According to the charge, a blind, homeless man contacted the mission to seek shelter. HUD says that a mission employee told the man that he could not move into the shelter with his guide dog even after the man said he could not be without his service animal. His case worker then contacted the mission and explained that the man needed the guide dog because of his disability, but the mission employee still refused to allow the dog on the premises. He said the dog would have to go somewhere else.

John Trasvina, HUD assistant secretary for fair housing and equal opportunity, said, "for many people with disabilities, guide dogs and other assistance

animals are necessities, not options. HUD will enforce Fair Housing Act protections to ensure that housing providers grant reasonable accommodations requests."

The charge will be heard by an administrative law judge unless either party elects to go to court. If the judge finds for the man seeking shelter, he may order the mission to pay the man damages, may order the mission to comply with the law in the future and may order that the mission pay attorney fees.

If you have questions about fair housing, please contact the BHRC.





## Harassment at Construction Sites

Kerry Woods was an iron worker and structural welder employed by Boh Bros. Construction Company. He was hired in 2005 to help repair bridges near New Orleans after hurricane Katrina. His supervisor was Chuck Wolfe.

According to a recent court case, the worksite was an "undeniably vulgar place," where the crew and Wolfe routinely used "very foul language" and "locker room talk." Wolfe apparently was the worst offender, and his frequent target was Woods. He called Woods a "pu\_\_y," "princess" or "fa\_\_ot" several times a week. Two or three times a week, if Woods was bending over to perform a task, Wolfe would approach him from behind and simulate a sexual act with him. Woods said this was embarrassing and humiliating. He said that about ten times, Wolfe exposed his penis to him while urinating, sometimes waving and smiling when he did so.

One time, Woods was taking a nap in his car during a break. Wolfe approached the car, tapped on the window and mimed zipping up his pants. He made a vulgar comment about what he would have done if the door had not been locked.

Another time, Woods mentioned at work that he preferred to use Wet Ones instead of standard toilet paper. Wolfe told him that doing so was "kind of gay" and "feminine."

Woods complained to the foreman several times. He said he did not keep complaining because he was afraid doing so might cause more of a conflict.

In 2006, Woods approached an inspector and asked to see the maintenance crew's time sheets, a violation of policy. The inspector in turn reported this to Wolfe. Wolfe then told a superintendent, adding that he didn't care for Woods because Woods was "different" and "didn't fit in." He said he was "done with" Woods.

The next day, Wolfe told Woods to meet with the superintendent. At the meeting, Woods reported Wolfe's harassment in detail. He also told the superintendent that Woods was probably stealing company gas and was shrimping on company time. The superintendent did not mention the timesheet issue. He told Woods he would look into the harassment allegations and sent him home without pay because he feared more problems between Wolfe and Woods. Woods complained and was allowed to return to work a few days later, but did not receive back pay.

The company spent about twenty minutes investigating the harassment complaints, concluding that Wolfe's behavior was unprofessional but did not constitute sexual harassment. It spent more than 80 hours investigating the reports that Wolfe

had stolen gas and had shrimped on company time.

Woods filed a complaint of sexual harassment in the workplace, and recently won his case in a decision by the Fifth Circuit Federal Court of Appeals. The Court noted that the company, although it had a general nondiscrimination policy, the policy said nothing about sexual harassment or how to complain about it. The company did not train its supervisors well - both Wolfe and his supervisor thought that sexual harassment occurred only when it is motivated by sexual desire. Its immediate reaction when Woods complained was to send him home without pay and to do a cursory investigation. It did nothing to curb Wolfe in the future.

A long dissent said there was no evidence that Wolfe thought Woods was "unmanly," so he should not have been found to have targeted Woods for that reason. The evidence showed that Wolfe was vulgar towards everyone, had mooned other employees and had made fun of Woods about how he engaged in intimate relations with his wife. The dissent said "That majority should call it for what it is: immature and gutter behavior between and among male co-workers. And then drop it." The case is Equal Employment Opportunity Commission v. Boh Brothers Construction Company, LLC, 2013 WL 5420320 (5th Cir. 2013).





## City Commission on the Status of Women Seeks Nominations For Yearly Awards

The City of Bloomington Commission on the Status of Women is seeking nominees for the Woman of the Year, Emerging Leader and Lifetime Contribution Awards. The deadline for submission of nominations is January 24, 2014. The awards will be presented during Women's History Month, March, 2014.

The Woman of the Year Award is presented to a woman who has improved the quality of life for other women through inspiration, community service or professional accomplishments above and/or outside normal job responsibilities. The recipient is also someone who serves as a positive role model for girls and women and who has made outstanding contributions to the community.

The Lifetime Contribution Award recognizes a woman whose work has significantly advanced the

status of women through leadership and service. The Emerging Leader Award acknowledges a woman with a relatively short (fewer than five years) history of significant achievements and recognizes the potential for future contributions.

Nomination forms are available in the City of Bloomington's Community and Family Resources Department, Suite 260 and online at [www.bloomington.in.gov/csw](http://www.bloomington.in.gov/csw) or by contacting Sue Owens at [owenss@bloomington.in.gov](mailto:owenss@bloomington.in.gov).

Nominations should include the name, address, telephone number and e-mail address of the nominee in addition to the reasons why the nominee merits the award. The nominator also should include his or her name, address, telephone number and e-mail address.

The Emerging Leader award recipient will be honored at the Women's Leadership Development event on Thursday, March 13, 2014 at City Hall.

The Woman of the Year and the Lifetime Contribution award recipients will be honored at the Women's History Month Lunch on Wednesday, March 26, 2014 at the Convention Center.

Send completed nomination forms by e-mail to [owenss@bloomington.in.gov](mailto:owenss@bloomington.in.gov) or by mail to The Commission on the Status of Women, P.O. Box 100, Bloomington, IN 47402.



## Class Action Settlement for Deaf and Hearing Impaired Postal Workers

In the wake of the 9/11 anthrax attacks, Postal Services provided safety training to its employees on handling mail that could contain dangerous substances. But Postal Services did not have in place a good system for getting that important information to its deaf and hearing impaired employees.

Employees filed a class action suit to make sure there would

be adequate access to interpreter services for deaf and hearing-impaired employees under the Rehabilitation Act (similar to the Americans with Disabilities Act). The suit was recently settled.

Under the terms of the settlement, the Postal Service will greatly expand the deployment and timely availability of qualified American Sign Language

interpreters for important safety and workplace communications for deaf and hearing-impaired employees throughout the country. The class members also will share in a fund of compensatory damages of approximately \$3 million. Attorneys representing the plaintiff agreed to donate part of their fees to public interest legal organizations that provide their service on a pro bono basis.